

# NationsBank

July 8, 1997

Director, Card Technology Division  
Financial Management Service  
U.S. Department of the Treasury  
Room 526, Liberty Center  
401 14th Street, S.W.  
Washington, DC 20227

Re: RIN 1510-AA59  
Direct Federal Electronic Benefit Transfer Program

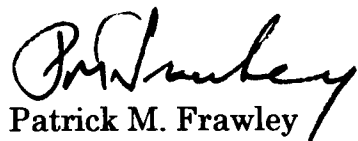
Dear Director:

NationsBank Corporation ("NationsBank") is pleased to offer the attached comments to the Department of the Treasury, Financial Management Service (the "Service") in regard to the Service's proposed Part 207 dealing with the Direct Federal electronic benefit transfer ("EBT") program.

NationsBank, headquartered in Charlotte, N.C., is a bank holding company that provides financial products and services nationally and internationally to individuals, businesses, corporations, institutional investors and government agencies. NationsBank has primary retail and commercial banking operations in 16 states and the District of Columbia. As of March 31, 1997, NationsBank had total assets of \$239 billion.

We appreciate this opportunity to comment on this important proposal. Should you have any questions regarding our comments, please contact Kathryn Kohler, Assistant General Counsel, at (704) 386-9644.

Sincerely,



Patrick M. Frawley  
Director, Regulatory Relations

Attachment

207.027

**NationsBank Corporation's Comments**  
**Docket RIN 1510-AA59**

NationsBank Corporation ("NationsBank") is pleased to offer the following comments to the Department of the Treasury, Financial Management Service (the "Service") in regard to the Service's proposed Part 207 dealing with the Direct Federal electronic benefits transfer ("EBT") program.

NationsBank recognizes that in any arrangement for the provision of EBT services between the Service and a Financial Agent (which will be one or more financial institutions chosen by the Service to provide such services), many of the duties will be spelled out initially in an agreement between the Service and the Financial Agent. It is NationsBank's understanding that the Service's purpose in promulgating proposed Part 207 to Title 31 of the Code of Federal Regulations is to establish the basic parameters for such a relationship.

**Scope**

It appears that proposed Part 207 is primarily directed to a debit card program rather than a stored value card program. However, it is possible, under the description of the scope and other definitions contained in the proposed regulation, that a stored value card program could be implemented as well. NationsBank would like to clarify that a stored value card can consist of both a card with an embedded computer chip and a card with a magnetic stripe on the back. Both the chip and the magnetic stripe can be loaded with value. In addition, a stored value system could be used on an on-line basis whereby the system records the amount of the stored value associated with a card when the card is used and updates that value on the system rather than on the card. Since stored value cards and systems are relatively new technologies which need to be allowed to develop before being overly regulated, NationsBank urges restraint on further regulation in this area as well.

**Definitions**

The definition of the word "disburse" provides for the establishment by the financial institution of an "account" in the name of an "unbanked recipient." However, the proposed regulation elsewhere makes it clear that the account relationship is between the financial institution and the Service. Therefore, in the traditional sense, there is no deposit account relationship between the financial institution and the "unbanked recipient." In fact, the definition of the term "unbanked recipient" states that the recipient is one who does not have an account at a financial institution. Thus, it must be made clear that

**NationsBank Corporation's Comments**  
**Docket RIN 1510-AA59**  
**Page 2**

although the financial institution will be keeping records of the funds deposited with it for the benefit of a particular recipient (more of a financial account rather than a deposit account), and must allow access to those funds, no deposit account relationship exists directly between the financial institution and the recipient.

It is important to understand the exact legal relationship between the financial institution and the recipients. It is possible that the financial institution could receive legal process relating to funds of an "unbanked recipient" for which records are kept. The proposed relationship may make it difficult to know how to respond under applicable state laws. Financial institutions need to know the exact relationship so that they can understand how to apply other laws (such as those governing legal process) to the funds being held. NationsBank recommends that the Service propose additional language to make it clear what relationship exists between the consumer and the financial agent.

**Duties of the Financial Agent**

Proposed section 207.3 sets forth the duties of the Financial Agent (in addition to any duties set forth in an agreement between the Financial Agent and the Service). This section requires the Financial Agent to establish an account in the name of each unbanked recipient. As set forth above, this terminology creates some confusion about the relationship created between the Financial Agent and the unbanked recipient. This is also true with respect to the requirement that the "accounts" be eligible for FDIC insurance.

NationsBank understands that the Benefits Security Card® mark would be used to identify the cards which are included in the program. Given that the Quest network has been established, at least in some regions of the country, to handle settlement of state EBT transactions, NationsBank believes that the Service should clarify how Quest (or any other similar network) will relate to the use of the Benefits Security Card® mark on cards and/or automated teller machines ("ATMs").

This section also requires the Financial Agent to comply with Regulation E. The obligation to comply with Regulation E is imposed on financial institutions which issue "accepted access devices" to access "accounts." An "account" is defined to mean a demand deposit, savings, or other consumer

**NationsBank Corporation's Comments**  
**Docket RIN 1510-AA59**  
**Page 3**

asset account held directly or indirectly by a financial institution and established for personal purposes, but does not include a bona fide trust account. Therefore, although the Service has indicated in the proposed rule that financial institutions would be obligated to comply with Regulation E without the specific statement in this rule, NationsBank disagrees. The manner in which the account relationship is established and the control over the "accounts" given to the Service are not consistent with traditional deposit account relationships between a bank and a customer.

There are many issues raised by requiring the application of Regulation E. The most significant issue is the potential liability which the financial institution may incur for unauthorized transactions. In a traditional deposit account relationship, if the financial institution believes that a particular customer is involved in fraudulent activity, i.e. unauthorized transactions on an access device, the financial institution can terminate the account relationship with the customer. However, in this situation, only the Service would be able to terminate that relationship. Experience with state EBT cards has indicated that the card can become an "entitlement" and the financial institution issuer would continue to be obligated to honor access through the card despite continued unauthorized transactions and losses.

Additionally, Regulation E imposes an obligation to issue periodic statements for each monthly cycle during which an electronic funds transfer has occurred. This could be a large burden on the Financial Agent and may not provide timely or beneficial information to the benefits recipients (who frequently withdraw all or most of the funds disbursed to them immediately upon the availability of such funds). NationsBank urges the Service to exclude the periodic statement requirement of Regulation E, even if the rest of Regulation E is found to be applicable. Another large area of responsibility imposed on the issuer under Regulation E, which would also be required of the Financial Agent under the proposed rule, is the error resolution procedures. All of these issues could present a large personnel and monetary burden on the Financial Agent.

As NationsBank understands the proposed handling of this program, it may be the intention of the Service that some or all of these matters will be covered in the agreement between the Service and the Financial Agent which may provide for compensation to the Financial Agent for these matters. Nevertheless, NationsBank does not believe that the Electronic Funds Transfer Act and Regulation E apply to the relationship described in the proposed rule.

**NationsBank Corporation's Comments**  
**Docket RIN 1510-AA59**  
**Page 4**

Under the proposal, financial institutions will not be required to issue cards under the EBT program, but instead will bid for this business. NationsBank strongly supports such a position and believes that it will result in a more effective and widely accepted program. In addition, it is important to make the rule clear that the Financial Agent (or Agents) is not responsible for assuring acceptance of the Benefit Security Cards® at ATMs or point of sale ("POS") terminals other than those owned and operated by that financial institution. In other words, efforts to promote acceptance of these cards by other financial institutions at ATMs and POS terminals which they own or operate would be the responsibility of the Service. NationsBank encourages the Service to make both of these points clear in the final rule.